

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

30.00 ACRES OF LAND, MORE OR
LESS, SITUATE IN HIDALGO COUNTY,
STATE OF TEXAS; AND ALEIDA
FLORES aka ALEIDA GARCIA,

Defendants.

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CASE NO. 7:19-CV-270

UNSWORN DECLARATION UNDER PENALTY OF PERJURY OF JASON POWELL

I, Jason Powell, hereby declare as follows:

1. I am the Director of Planning and Project Execution for the Border Patrol under the Program Management Office Directorate Border Wall Program. I have held this position since August of 2019 and prior to that time I was the Deputy Director, since 2017.
2. The duties and responsibilities of my position include, essentially, but not limited to, planning the alignment of border infrastructure, including wall and fencing, as well as overseeing the successful construction of the infrastructure program across the country. I work with defining where the wall swath for the full project will go at designated locations.
3. Part of what I oversee includes the surveys and other activities sought from landowners in rights of entry ("ROE"). ROE gives us an opportunity to go out onto the property in order to determine, by means of an initial assessment, where we would like to construct the wall based upon operational requirements and engineering metrics. Gaining access onto the property helps us ground truth or ascertain through direct observation and study the locations and the assumptions we have initially made. The ROE also allows us to do geotechnical investigations, topographic investigations, and surveys in order to further the design process.
4. The types of contracts involved with the ROE process are: (1) surveys for boundary; (2) topographic surveys; (3) biological and cultural surveys as part of the design process; (4) geotechnical investigation surveys and (5) pre-condemnation valuation appraisals.
5. The surveys for boundary define boundaries of the property first and foremost, as well as the location of the actual barrier and the enforcement zone that will be part of the border infrastructure system. The boundary survey is done once the right of entry is

- obtained. Contracts are let and the contractors go look at the boundaries. To set the boundaries, there might not be a need to go into the property and the process can take less than a day. For rights of entry which are given voluntarily, if the landowner wishes to be notified, the team will notify. If it's a land condemnation case, the landowner is notified once possession is acquired. These surveys generally consists of a walk through, where members of the team, engineering support teams, walk through to do the assessment, to ground truth of the most prudent alignment based upon the operational requirements and the engineering.
6. This initial site review typically involves a team of about 15 to 20 individuals that traverse the property. The initial assessment is fairly quick. Typically a full alignment analysis can be done over a series of days. For a 30 acre parcel, like the subject property, the team is generally on the land for less than 30 minutes, at most a day. If there is a need, the team might have to return to the property after the initial site assessment once the alignment has been confirmed. The team will attempt to access the location where the proposed barrier and alignment are, what we refer to as the footprint.
 7. Topographic surveys are needed to do a physical investigation to determine the height and elevation of the land in and around the proposed parcel, and markers may be placed. It may also include LIDAR, which is a fly over analysis done with a drone to determine the gradients in topography. This and the marker can help with coordinating the data obtained. A topographic survey is generally done in one day or at most, in two days.
 8. Geotechnical surveys are conducted to determine construction properties, what the soil is like, what needs to be built as a foundation for the barrier itself and what recommendations are needed for the roads to be built on the particular parcel. This survey may require boring, which consists of a four (4') inch wide drill put down into the ground to determine geotechnical properties of the soil. Boring holes are backfilled immediately after the assessment is completed. A boring is not required on every parcel but on average the project requires the completion of a boring every mile. A geotechnical survey is generally completed in one day.
 9. Environmental/biological/cultural surveys are also completed. As part of best management practices, the site is reviewed to determine if there are any potential cultural items that may impact construction. Historical data is also evaluated. The environmental portion requires an individual to out onto the parcel and look for animals and nature species that are present. This activity is performed in less than a day.
 10. Pre-condemnation valuation appraisals are another part of the ROE and are performed to determine the appraised value of the land. The appraisers go out and conduct site reviews as part of their assessment prior to submitting their reports. This is also done in a day, at the most.
 11. Most of the previously described survey and assessment activities are conducted within the proposed construction footprint. The environmental survey may deviate 200 feet north and south of the footprint to obtain a buffer of assurance, however, once boundaries are set the contractors stay within the proposed construction footprint.
 12. In total, the entire ROE process will take at the most six (6) to eight (8) days, if all phases/surveys occur separately. Many times some activities may be done simultaneously, but at the most and on average, the ROE process will take no more than eight (8) days

13. The reason the United States acquires a one (1) year or twelve (12) month easement is because of the limited resources. The contractors and resources are limited and flexibility is needed to accommodate the resources available. The contractors are working across the Rio Grande Valley and the performance of the survey will depend on when the contractor is able to go to a particular parcel, therefore, flexibility is needed to allow contractors to carry out their work across the entire Rio Grande Valley.
14. If requested, notice is always given to the landowner prior to the contractor accessing the land.
15. Although it is feasible for most landowner activities to continue while the contractors carry out the surveying activities, the contractors still work with the landowners to keep them informed, if they so request. The contractors take measures to minimize any impact their presence may have on any activities the landowner may be performing on his or her land. If there is a specific activity the landowner is performing or wants to perform on his or her land, the contractors always coordinate with the landowner to avoid any negative impacts.
16. Generally, ROEs are negotiated with the landowners without any consideration paid as there is no measurable market value for such a temporary interest that does not impair use of the property by the landowner. However, if ROEs are not negotiated, either due to title issues, absent landowners or lack of agreement, a condemnation action must be filed. The Declaration of Takings Act requires the United States to deposit its estimate of just compensation when filing a condemnation action. In cases involving ROEs, the United States has elected to deposit \$100 to comply with the Act, but this does not represent market value, but rather an administrative decision that this interest is of nominal value and \$100 is appropriate.
17. I declare, pursuant to 28 U.S.C. § 1746, that the information is true and correct to the best of my knowledge, information and belief, under penalty of perjury. I further declare that this Declaration was executed on this 25th day of April, 2020 in Fort Worth Texas.



JASON POWELL